

## Summary of City of Chula Vista Tour of Aurora, CO

In June 2017, a delegation of City of Chula Vista staff and elected officials visited Aurora, CO to meet with officials about implementation of policies and permitting processes to regulate retail marijuana establishments following passage of a statewide ballot measure legalizing recreational use of marijuana by adults in Colorado. Chula Vista officials met with Aurora Marijuana Enforcement Division staff, City Manager, Council member and Mayor.

Aurora is Colorado's third most populous city, with a population of approximately 351,000. It is located just east of Denver. The city encompasses approximately 154 square miles.

In 2010, Aurora voters opposed a ballot question that would have allowed medical marijuana establishments in the city. Medical marijuana establishments, including medical marijuana dispensaries, medical marijuana cultivation facilities, and medical marijuana-infused product manufacturers, could not operate within the city.

In 2012 when Colorado voters approved Amendment 64 to be added to the Colorado Constitution, it did three things:

- Legalized the use and possession of limited amounts of marijuana for anyone ages 21 or older
- Provided a system of regulating commercial marijuana, including licensure of facilities for cultivation, manufacturing, testing and retail stores
- Allowed cities, towns and counties to decide whether to allow commercial marijuana establishments in their jurisdiction, and to regulate time, place and manner in which the establishments operate

As a result of the statewide passage of Amendment 64, the city of Aurora created a process to permit retail marijuana establishments to operate in 2014. The Pro 64 vote in Aurora was 54/46, which was similar to the statewide vote.

*Demographic Info:* 9% of the population is age 65 or older; 27% are under the age of 18; 46.3% are married; the median age is 32; the average household size is 3. Approximately 27.9% of the population has a bachelor's degree or higher. The racial makeup of the city is approximately 47% White, 29% Hispanic, 15% African American, 5% Asian, 1% Native American. The median family income is \$52,551. The median house value is \$189,100. 91% of the population lives above the poverty level.

*Economy:* The largest public employers are: Buckley Air Force Base; Anschutz Medical Campus, University of Colorado Hospital; public schools; the City of Aurora; and the Community College of Aurora. The largest private employers are: The Children's Hospital; Raytheon; Kaiser Permanente; ADT Security Services; HealthONE Colorado; Northrop Grumman; Lockheed Martin Corporation; Staples; Beverage Distributors Co.; Advantage Security, Inc.

*Government:* The city manager runs the city with guidance from the city council. The City Council has a mayor and ten council members – four are elected at large, and six by ward. The city maintains the Aurora Police Department, Fire Department, Aurora Municipal Courts, and the Aurora Detention Center

Aurora city council voted to begin issuing licenses for retail marijuana establishments & medical marijuana testing facility in May 2014 (effective July 2014). Most medical marijuana businesses (dispensaries, cultivation, manufacturing) are still not allowed within the city per the 2010 ballot. Only medical marijuana testing is allowed.

Retail marijuana store licenses are limited to 24 (four in each of the six council wards). There is no limit to the number of cultivation, manufacturing, and testing facility licenses. Store licenses are awarded through a competitive, point-based scoring process. Applicants must demonstrate a minimum of \$400,000 in liquid assets and meet other minimum standards. Establishment and operating plans are scored by independent, confidential reviewers. State and city licensure are required before operations commence at retail marijuana establishments (e.g., 1,000 feet from schools). Applicants are subject to rigorous background checks and must have been a state resident for at least two years. Points are awarded for criteria such as clean criminal records, more industry experience, tax compliance and installation of odor mitigation equipment.

City code permits retail marijuana establishments to operate within specific zoning districts. This permitted use is non-conditional and allowed by right, meaning no public hearing or comment process is required to determine whether these establishments are allowed to operate in a specific location. If the city approves this type of establishment for a license and it meets the zoning requirements, the city will allow it to operate in that location. Like other retail stores such as grocery stores, neighborhood notification is not required.

There are currently 21 retail marijuana stores and five cultivation operations. Marijuana accounted for \$5.3 million in revenue for 2016 (\$6.1 million projected revenue for 2017).

Local taxes on marijuana = 5.75% (combined city sales + city retail marijuana tax). \$15,000 license fee.

Marijuana Enforcement Division: consists of 3 F/T employees (manager, financial analyst, and planner) and five staff members (building inspection supervisor, three plans examiners, and police sergeant) who charge their time as incurred.

Process: 1) Fact Finding/Pre-Licensing Meeting; 2) Application Process; 3) Licensing; 4) Building Permits; 5) Inspections.

Prior to heading to Aurora, we sent them the following questions:

#### Revenue

- How did you determine your tax rate? Was/is it impacted by neighboring jurisdiction rates?
- How long do you anticipate keeping marijuana revenue separate from general fund revenues?
- How do you forecast future revenue given volatility/competition?
- Do you earmark revenue for specific things?
- How do you effectively audit cash-only businesses?
- What is your retail vs. cultivation revenue comparison?
- How would/do you tax manufacturing/production/testing?

## Economic Development/Regulation

- How did you come up with the \$400,000 liquid asset requirement?
- Is there an insurance requirement for marijuana businesses?
- Have you seen a difference in retail v. cultivation business investment?
- Do you measure job growth in your city's marijuana sector? If so, what are you seeing?
- How do you handle marijuana advertising/marketing?
- How did you calculate your license/application fee?
- Have you had an issue with unlicensed operations?
- Did your regulatory fees cover your regulation expenses?
- Have property values and lease rate increased where retail and manufacturing/production/testing are allowed?
- Has the vacancy rate dropped as a result of the legalization?
- Any data on number of employees per retail establishment and average education and pay?
- Any data on number of employees per manufacturing/production/testing establishments and average education and pay?
- Any data on number of jobs created to support the industry (i.e. organic fertilizer, grow lights, construction/set up contractors...etc.)?

## Public Health/Safety

- Do you limit edibles or the marketing of edibles that are attractive to children?
- What impacts, if any, have you see? Any tips for mitigating potential negative impacts?
- Have you seen any evidence of increased marijuana-related youth consumption; DUI's; homelessness; medical emergencies?

## Human Resources Issues

- Did you need to add new city staff to handle regulations?
- Do you require pre-employment urinalysis testing?
- Can/should you do anything about employee recreational uses away from work?
- How do you deal with recreational use and public safety personnel?
- Does your Code Enforcement division participate in enforcement?
- Who is responsible for enforcing against unlicensed business activity? How do they enforce?

## *Aurora Visit Summary*

Welcome with brief overview from Robin Peterson, Manager, Marijuana Enforcement Division (AMED)

Robin stated that they opted to go with the vote of the people on Amendment 64 and not have a separate local vote on commercial operations in Aurora. For the most part, the initial implementation was designed to be discreet to avoid complications from publicity that might raise awareness of cartels or DEA. Aurora officials wanted to make their requirements as restrictive as possible from the beginning. Business operators could not have any convictions at all (felony or misdemeanor). They can have no drug convictions at all. Growers are only allowed in industrial areas. Retail zoning has setbacks (as mandated by state law – schools, daycare centers, etc.) and locally imposed separation regulations from religious institutions. Retail operators are limited to four per district.

Aurora made an effort to choose the best possible operators. City staff took two years to study the process. They keep the revenues in a separate fund to be spent for one-time uses only such as infrastructure or to address homelessness, as it is difficult to predict the amount/stability of income. They created a Council committee with open meetings as a first step.

They use the operating fees to pay for the Aurora Marijuana Enforcement Division, and the sales and excise tax is dedicated to capital improvements. Aurora bonded against the tax revenue to pay for a new recreation center and a day resource center for homeless.

Their illegal operations have been growing. But, not in retail. (The city never had a problem with illegal retail operations prior to regulating, only with illegal grows). There used to be 2-3 illegal grows a week but those are now up to 5 a week. Although there has been some increase in homelessness, no one is sure whether that can be attributed to marijuana businesses or just a rise in homelessness for other reasons.

Locating a place to set up shop is a challenge for most marijuana establishments. Applicants must secure a location via a lease or purchase agreement prior to applying for City and State licensure.

Practical considerations may limit where an establishment may locate. For example, most new developments will not lease to a marijuana establishment as it may impact the property's bank financing.

Changes to an establishment's physical structure and changes of location require completion of the Change of Location or Modification of Premises form with a fee of \$2,500. Changes to an establishment's business structure, including change of legal or trade name, change of ownership structure and license transfer, require the Report of Changes to Marijuana Business License form. Fees for these are as follows:

- Changes of legal entity name: \$100
- Change of business trade name: \$100
- Change of business ownership structure: \$2500
- Transfer of retail marijuana establishment license: \$15,000

Ninety days prior to a license's expiration date, AMED will send the licensee a letter, renewal form and invoice for the applicable operating fee. The form, fee and any required supplemental documentation must be returned to AMED before the renewal is approved.

Anyone who works on extraction equipment must be certified by equipment manufacturers.

The market for real estate for marijuana industrial uses (cultivation, testing, manufacturing) is highly competitive. Marijuana establishments often have to settle for a location that is less than ideal in terms of visibility or condition, and the establishment invests heavily in improving the site to make it more attractive and secure for their operations.

Applicants can have no felony convictions at all and no misdemeanor drug convictions. The PD contracts out for background checks because it takes fewer officers.

There has been an increase in burglaries and one homicide which may be related to the marijuana industry.

If you have a store you cannot have a testing facility.

Retail operators can only own up to 6 licensed establishments.

Comments from Mayor Hogan and Council Member Bob Roth:

Proud of what we have done in Aurora. Feels they are ahead of the curve and were observant of their neighbors. Happy with our two-year review process (enacted a local moratorium after the 2012 statewide vote, which remained in place while they conducted their two-year review process) to get it done right. They have had several hundred in the metropolitan (Denver) area. Aurora has not seen a huge increase in crime or homelessness like Denver.

The decision was made to not put the funds in the general fund to avoid budget battles. Plus, you can't guarantee what tax revenue will be generated so the city did not commit potential one-time dollars to on-going costs like police and fire.

He believes that the cities that have said yes to Marijuana have benefited. The cities that said no have ended up with stores right up to their borders in neighboring cities that allow retail sales.

Ultimately, city officials decided to respect the wishes of the citizens. They figured that this is an eighteen-year experiment and they will evaluate the program after that.

Aurora is part of three counties. They have spent a lot of time coordinating with school districts. Part of the state revenue for marijuana goes to schools and for public education. They provide a "Good to know" site on marijuana for residents and potential businesses.

Comments from Skip Noe, City Manager:

For many years Denver had a very active medical program. Now they have 4/20 festivals every year in the park. Once Denver approved recreational marijuana everyone started going there and the adults could grow up to six plants. Aurora felt like the marijuana was going to be there anyway so they felt better studying, regulating and monitoring.

Their GIS folks did maps of where stores could be set up. They had no citizen input at their committee meetings. Did not limit the distance between stores, only that they had to be 1,000 feet from schools and other sensitive uses. Some clustering has occurred. They required the approved business operators to have experience, business plans and security plans. The rating of each establishment was done confidentially. Most of the approved Aurora vendors already had operations in Denver so they knew what they were doing. They gave the raters the opportunity to visit the establishment but they chose not to.

Odor control was a big issue so they put a lot of regulations there. They made their expectations clear. The criteria were only used for stores. Cultivation does not require ratings. There is no limit on the number of cultivations other than they must be in industrial areas and not near the retail stores.

The property value on industrial building have gone up since passage. They mapped out all the possible grow operations in advance. The annual fee on growers is \$15,000 for every type of operation plus 5% excise tax on grow operations. As part of their vote they can set this tax between 2% and 10%. They take 5% of the average sell price, whatever that is.

They allow the businesses to operate for a year or two before they consider auditing. They haven't had any issue with businesses not paying taxes. They did get one suit over their vetting process from someone who was denied. In fact, they had almost no push-back.

The police may not like it but it was here anyway. They received 56 applications and originally awarded 21. They are adding an additional 3. They have 11 MEPS, 12 cultivations and 21 stores. They were not originally fond of the limit per ward but ultimately that was important to the council members and that worked out fine.

The police will say that there is a lot of youth impacts and a spike in middle and high school use but there is no hard data to back that up. Officers have stated that there has been an increase in youth overdose situations. As far as the edibles – the state established conditions. Aurora does not allow anything to look like other commercial food products such as gummy bears. AMED is getting more involved in the packaging for retail. Because of the proximity to Denver it (edibles) was already going to be there so they didn't restrict them.

Aurora recommended that you always treat as much as possible the revenue as one-time dollars. The state receives 8% and if you allow it you get a percentage back. The state placed limits on marketing and advertising. You can't put advertising on billboards or in windows in Aurora.

Some unresolved issues include determining what is a public place. You can do it in your own home. Some people are pushing for marijuana clubs but they currently don't allow and will wait for the state to create that opportunity.

#### Comments from Public Safety

- Legalizing cannabis sales have increased black market activities near regulated dispensaries.
- Regulated business were not the problem.
- Staffing approved per Council directive to be at 2 officers per 1,000 residents. Currently at 1.85 officers per 1,000 residents. Could be challenging because no new officer positions were created to help address crime and disorder issues.
- Homelessness increased substantially in Aurora and even caused the Aurora Police Department to install fences around their police facility to keep out the large number of homeless sleeping in front of the PD.
- Funding sources from cannabis were used to build homeless housing facilities and parks, which has brought in more homeless individuals. Funds should provide personnel to address crime and disorder and quality of life issues.

#### Comments from City Attorney's office:

The biggest problem is in the black market. They had to switch from enforcement to regulation. The City Attorney's office has 34 attorneys. 17 are dedicated to criminal misdemeanor and municipal code enforcement. The State has had medical marijuana since 2000. Aurora only allows recreational. Their testing facility is the only business allowed for medical. They have never had a problem with retail operations. They recommend building code violations as the best enforcement tool.

The black market is off the charts but they believe the black market would still be there if they hadn't approved. The legal business owners and managers have been great to work with – only 15% of police time for marijuana business is spent on regulation. They have had some increase in burglaries similar to when they add liquor stores or check cashing places. The police do a quarterly inspection of the alarm systems. Stated that they have at least 170 illegal grows per year. Attributes that to Colorado being "the wild west" of marijuana activity.

Comments from Building Inspectors:

Takes 14-18 weeks to grow a plant that produces between 1-3 pounds per "light". Can create black mold that requires abatement. They have found a diversion of utilities which is a felony. Stated that they don't "red tag" anyone. They go through the utility departments to find the illegal grows based on water and electrical use.

They are permitted to operate in a variety of commercial and industrial zoning districts. They cannot be located within 1,000 feet of a school nor within 500 feet of a hospital or inpatient substance abuse treatment center. There is no minimum distance between store licenses. The location is not considered in the licensing process but rather on the competitive application process.

The cultivation, manufacturing and testing establishment are only permitted to operate in industrial zoning districts. They cannot be located within 300 feet of a conforming residential use or any residential or open zone districts.

With odor, the growers can't have smell off of the premises.

We then toured "The Green Solutions" store at 14301 Colfax Avenue. The store was very clean and professional looking. Staff all looked very professional in suits or business clothes. Lots of security with guard, cameras. The owner described all of their products to us.

We then toured a product manufacturing facility called West Edison at 472 Laredo Street where they explained the ventilation requirements as well as what they do with water and how they must destroy the leftover product. They showed how they make the oils as well as other product including aerosols.